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NO. 80-1590

IN THE SUPREME COURT

Of The

UNITED STATES

October Term, 1980

WILLIAM J. LURIE, et al.,
Petitioners,

vs.

STATE OF CALIFORNIA, et al.,
Respondents

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE DEUKMEJIAN
Attorney General
N. GREGORY TAYLOR
Assistant Attorney General
RICHARD C. JACOBS
Counsel of Record
Deputy Attorney General
MARY E. HACKENBRACHT
Deputy Attorney General
6000 State Building
350 McAllister Street
San Francisco, CA 94102
Telephone: (415) 557-0767
Attorneys for Respondents.

QUESTION PRESENTED

The question presented is whether petitioners failed to properly reserve their federal claims under England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964), and fully and freely litigated their federal claims in state court.

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WILLIAM J. LURIE, et al.,
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vs.

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OPPOSITION BRIEF TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTION

Petitioners would invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS

The question presented to this Court involves the doctrines of res judicata and abstention. No constitutional provisions, treaties, statutes, ordinances or regulations are involved.

STATEMENT OF THE CASE

Petitioners, members of a limited partnership, leased a parcel of land located within a marina owned by the County of Los Angeles. On March 6, 1974, pursuant to its authority under the California Coastal Zone Conservation Act of 1972, former California Public Resources Code section 27000, the California Coastal Zone Conservation Commission rejected petitioners' application for a permit to construct a hotel on the leased property. Petitioners responded by filing suit in state court on April 23, 1974. Their complaint sought an order permitting the planned construction and damages due to delay, or alternatively, damages as compensation for the lost value of their leasehold and their development expenditures. CR 55.

On May 6, 1974, they filed a virtually identical complaint in United States District Court. CR 1. Both complaints

alleged, inter alia, violations of the due process clause and the contracts clause of the United States Constitution. The District Court abstained pending resolution of the state court proceedings.

Thereafter, petitioners prosecuted their case in the state courts. Federal as well as state claims were consistently placed before the trial court for its relief. Respondents' general demurrers were sustained in their entirety as to two defendants and were sustained as to all defendants with respect to certain issues of federal and state law. CR 254, 259. Petitioners sought and were denied judgment on the pleadings based upon their federal and state claims. Petitioners sought a peremptory writ of mandate in the trial court based upon both federal and state claims. In a footnote on page 149 of a 200 page memorandum of points and authorities in support of their claims,

petitioners mentioned a "reservation" of federal claims. Following an adverse ruling by the state court, petitioners requested special findings of fact and conclusions of law that expressly adjudicated the federal issue. After consideration of the proposals, the trial court issued extensive findings of fact and conclusions of law adjudicating the federal claims. CR 271, 287, 288.

Petitioners unsuccessfully appealed the trial court decision to the California Court of Appeal. In a footnote of their 122-page brief before the Court of Appeal, petitioners mentioned their "reservation" of federal issues. Petitioners continued to urge reversal of the trial court's decision on the merits of both the federal and state law claims. The State Court of Appeal upheld the trial court's decision in its entirety. Marina v. CCZCC, 73 Cal.App.3d 311 (1977).

The California Supreme Court denied a subsequent petition for hearing.

Petitioners then sought to return to the District Court to litigate their federal claims. Finding that they had submitted their federal issues to the state courts and had obtained rulings with respect thereto, the District Court held the claims barred under the doctrine of res judicata and dismissed with prejudice. On appeal, the Ninth Circuit Court of Appeals affirmed, holding that petitioners effectively failed to reserve their federal claims and fully and freely litigated them in the state courts.

SUMMARY OF ARGUMENT

Petitioners claim two grounds on which this Court should issue a writ of certiorari: 1) the Court of Appeals erred in its decision to dismiss petitioners' action; and 2) there is a need for a rule establishing a specific time and method for reserving

federal claims in state court. Neither ground is appropriate for the issuance of a writ of certiorari.

The District Court and the Court of Appeals correctly analyzed petitioners' actions in state court and found that petitioners had waived their right to return to federal court and were barred by res judicata from relitigating their federal claims. The two lower courts, applying the test prescribed by this Court in England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964), found that petitioners had failed to adequately inform the state court that they were reserving their federal claims for determination by a federal court. The courts also correctly found that petitioners had fully and freely litigated their federal claims in state court.

In England, this Court enunciated a clear standard for preserving in state court

one's right to have a federal court determine federal claims: a party need only reserve his claims from state court determination. In view of the enormous variety of litigation situations in which a party electing to preserve his federal claims might find himself, this Court has wisely declined to prescribe a strict format for reserving one's claims. The current general standard is fully adequate and reexamination in this case is unwarranted.

ARGUMENT

I

THE DISTRICT COURT AND THE COURT OF APPEALS PROPERLY FOUND THAT PETITIONERS ARE BARRED BY RES JUDICATA FROM RELITIGATING THEIR FEDERAL CLAIMS.

Parties in state court following a federal court decision to abstain, have an election either to litigate their federal claims in state court or to preserve their federal claims for a return to the federal

courts. See NAACP v. Button, 371 U.S. 415 (1963). This Court has enunciated a clear test for determining whether a party has elected to litigate his federal claims in state court. In England v. Louisiana State Board of Medical Examiners, supra, 375 U.S. 411, this Court stated:

> "[w]e now explicitly hold that if a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, and has them decided there, then - whether or not he seeks direct review of the state decision in this Court - he has elected to forgo his right to return to the District Court. Id. at 419.

The decisions of the District Court and the Court of Appeals properly apply this standard. Looking to the entirety of petitioners' actions in state court, the lower courts found that there had been no effective reservation of the federal issues and that petitioners had freely and fully litigated and submitted their claims to the

state courts. Pet. App. A-2 - A-3 and B-4 - B-5.

Several salient points of the Court of Appeals' analysis bear emphasis. The Court of Appeals properly analyzed and rejected petitioners' contention that a single footnote "buried" in the 149th page of a 200 page motion was sufficient to adequately inform the state court of the parties' intent to reserve their federal claims. Pet. App. B-8. As the Court of Appeals stated:

> "[t]o accept plaintiff's argument would undermine res judicata. A reservation serves the practical purposes of informing the Court that certain issues are not before it. We refuse to turn it into a talisman which, when secreted as it was here, insulates adjudicated issues from the doctrine of res judicata. Fairness demands that, to be effective, a reservation be brought to the court's attention. The reservation in this case failed to meet this standard." Id.

In view of petitioners' other actions before

the state court, submitting its federal claims to the state court, and requesting findings of fact and conclusions of law on such claims, the lower courts' unanimous conclusion is clearly correct. Review of their conclusion by this Court is unwarranted.

The lower courts unanimously found, upon review of the record, that petitioners had fully litigated and presented their federal issues to the state court. Pet. App. A-2 - A-3 and B-4 - B-5. The lower courts correctly rejected petitioners' post hoc characterization of their submission of the federal claims as "passionate" argument. The Court of Appeals noted that the complaints filed in the state court and the federal court actions were substantially the same, both alleging violation of the due process and contract clauses of the United States and California Constitutions. Pet.

App. B-11. The Court also noted that, in addition, petitioners submitted a notice of motion for peremptory writ of mandate to the state court in which they argued, inter alia, that the state action violated numerous provisions of the United States Constitution. Pet. App. B-11 - B-12. Moreover, the Court noted, the state trial court made specific findings of fact and conclusions of law in response to petitioners' allegations of unconstitutional taking and denial of procedural due process. Pet. App. B-12. Again, the lower courts' review of the facts of the case and their conclusion are clearly correct and this Court's review of their analysis and conclusion is unwarranted.

II

THIS COURT HAS PROVIDED CLEAR GUIDANCE FOR THE RESERVATION OF FEDERAL ISSUES FOR FEDERAL DETERMINATION.

Petitioners assert that the courts have provided no guidance as to how and when

a reservation should be made. This Court, however, has provided a clear standard for parties electing to preserve their federal claims. The standard is necessarily general in light of the enormous variety of situations in which a party would wish to reserve his federal claims. There is no need for further restriction of the reservation guideline and this Court should decline petitioners' request.

This Court, in England, clearly described a party's election to waive his right to return to federal court to litigate his federal claims. This Court held that a party has elected to forgo this right if he freely and without reservation submits his federal claims to the state courts, litigates them there, and has them decided there. England, supra, 375 U.S. 411 at 419. This holding provides a clear guideline for parties who wish to return to federal court.

They can preserve their federal claims by reserving them from state court determination. This Court even suggested one method for effecting this reservation: a party could simply inform the state court that the federal claims are being preserved for future determination by a federal court. Id. at 421.

Petitioners would have this Court prescribe a specific time and form for the reservation of federal claims. In England, however, this Court wisely declined to establish such strict criteria. Id. State courts are called upon to decide issues in a variety of contexts, in pretrial motions, during trial, and after trial. To restrict a party's opportunity to elect reservation to a particular time and format would present the very procedural trap that the Court specifically wanted to avoid. Id. at 419. Mindful of the variety of litigation situations in

which a party electing to reserve its federal claims might find itself, this Court chose to define the criteria for reservation in general terms. The Court refused to provide more specific criteria in England and should continue to refuse it here.

Even if this Court were inclined to redefine its guidelines for reservation, this case is not an appropriate vehicle for such re-examination. Petitioners' "reservation" claim fails to raise a serious question that it effectively informed the state court of their intentions.

CONCLUSION

This case is inappropriate for this Court's review. The lower courts properly concluded that the petitioners have had their day in court and should not be allowed to relitigate their federal claims. The method devised by this Court for preserving federal claims from state court determination is

functional and adequate and needs no revision. The petition for certiorari should be denied.

Respectfully submitted,

GEORGE DEUKMEJIAN
Attorney General
N. GREGORY TAYLOR
Assistant Attorney General
RICHARD C. JACOBS
Counsel of Record
Deputy Attorney General
MARY E. HACKENBRACHT
Deputy Attorney General

Attorneys for Respondents